



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

February 10, 1939

Hon. Wm. W. Allen
County Attorney
Lavaca County
Hallettsville, Texas

Dear Sir:

Opinion No. 0-122

Re: Whether deputy sheriff allowed to
serve and accept pay as bailiff to
to Grand Jury.

This Department acknowledges receipt of your letter of January 12th wherein you request an opinion as to whether or not, under Sec. 40, Article 16 of the Constitution of Texas, it would be lawful for a deputy sheriff who receives a very small salary from the county to serve and accept pay for serving as a bailiff to the Grand Jury.

The following provisions of the statutes apply as to the appointment of bailiffs:

"Art. 367. Bailiffs appointed

The court may appoint one or more bailiffs to attend upon the grand jury, and, at the time of appointment, the following oath shall be administered to each of them by the court, or under its direction: 'You solemnly swear that you will faithfully and impartially perform all the duties of bailiff of the grand jury, and that you will keep secret the proceedings of the grand jury, so help you God.'

"Art. 367b. Bailiffs appointed by District Attorney

The District Attorney may appoint one or more bailiffs to attend upon the Grand Jury and at the time of the appointment the

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Court shall administer to each of them the following oath: 'You solemnly swear that you will faithfully and impartially perform all the duties of bailiff of the Grand Jury, and that you will keep secret the proceedings of the Grand Jury, so help you God.' Said bailiffs shall be paid the sum and in the manner now provided by law."

The compensation payable to the bailiff is provided for in Article 1058, as amended by the Acts of 1935, 44th Legislature, ch. 192 and it will be noted that this provision underwent several amendments prior to the 44th Legislature.

Prior to the amendment by the Acts of 1925, 39th Legislature, said provisions in substantially the same language were incorporated under Article 1161, Code of Criminal Procedure, adopted 1911, with the possible exception of expressly providing therein that the deputy sheriff shall not receive pay as bailiff. The study of former Article 1161 and subsequent amendments discloses no mention of any compensation paid to the sheriff, his deputies or constables.

In 1917, Hon. C. W. Taylor, former Assistant Attorney General of Texas, wrote a conference opinion, No. 1740, in which it was held that the duties of the office of sheriff and his deputies, were incompatible with those of the office of bailiff with the Grand Jury. It was pointed out in said opinion that under the language of said Articles 417 and 419 (substantially the same as our present Articles 367 and 368, Code of Criminal Procedure, 1925 revised) requiring each bailiff to take the oath prescribed and obey instructions of the foreman of the Grand Jury, the office of bailiff was such, under the law, as would come within the provisions of Article 16, Sec. 40 of the Constitution of Texas, prohibiting a person from holding or exercising at the same time more than one civil office of emolument, except that of Justice of the Peace, County Commissioner, Notary Public and Post Master and such military or reserved officers named therein. The language used in the

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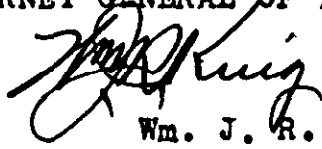
various amendments subsequently would not prevent the application of this opinion to the present statutes applicable.

We, therefore, respectfully advise that it is the opinion of this Department that the deputy sheriff would not be authorized to serve and accept pay as bailiff to the Grand Jury.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By


Wm. J. R. King
Assistant

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APPROVED:


ATTORNEY GENERAL OF TEXAS *mjm*